

REMARKS

The Office Action has been carefully considered and the foregoing amendment made in response thereto. The present status is as follows:

- The drawings are objected to under 37 C.F.R. §§ 1.121(a)(6), 1.83(a).
- The specification is objected to under 35 U.S.C. § 132.
- Claims 1, 4-23, 26-31, and 35-39 are pending in the application.
- Claims 1 and 4-23 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter Applicant regards as the invention.
- Claims 26, 29-31, and 35 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Hockerson (WIPO 98/20763).
- Claims 1, 4, 6-10, 19-21, and 39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hiss (U.S. Pat. No. 1,484,785) in view of Trimpop (German 29700699).
- Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hiss (U.S. Pat. No. 1,484,785) in view of Trimpop (German 29700699), and further in view of Kendall (U.S. Pat. No. 5,713,143).
- Claims 1, 5, 6, 8-10, 12-23, and 39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Giese (U.S. Pat. No. 5,572,805) in view of Trimpop (German 29700699).
- Claims 26-30 and 35-38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Giese (U.S. Pat. No. 5,572,805) in view of Trimpop (German 29700699), and further in view of Crowley (U.S. Pat. No. 4,393,604).
- Claim 31 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Giese (U.S. Pat. No. 5,572,805) in view of Trimpop (German 29700699), further in view of Crowley (U.S. Pat. No. 4,393,604) and Cameron (U.S. Pat. No. 3,739,497) or Barre (U.S. Pat. No. 5,473,827).

In view of the above amendment and following remarks, Applicant respectfully requests reconsideration and withdrawal of (i) the objections to the specification and drawings, and (ii) the rejection of claims 1, 4-23, 26-31, and 35-39.

1. Applicant thanks Primary Examiner Patterson for participating in an in-person interview with Applicant's undersigned representative held on 23-Jul-02, at the U.S. Patent and Trademark

Office. During this interview, Applicant's representative demonstrated an embodiment of the invention to the Examiner, discussed the revisions to the drawings submitted on 11-Dec-01, and reviewed ways to more clearly depict claimed attributes in the drawings. As discussed below, Applicant has clarified the drawing revisions. Further, Applicant has herein amended claims 1, 20, and 26 to more clearly describe the extent of the chassis. As discussed in the interview, this language is sufficient to overcome at least the objections to the drawings and specification, and the claim rejections under 35 U.S.C. § 112, second paragraph, and under 35 U.S.C. § 102(b) in view of Hockerson (WIPO 98/20763). Accordingly, Applicant respectfully submits that this Amendment and Response is consistent with that discussed in the interview.

2. The drawings are objected to under 37 C.F.R. §§ 1.121(a)(6), 1.83(a). The Office Action states that the drawings (i) introduce new matter with respect to showing specific areas of shading, shaping and layers, and (ii) fail to show different thicknesses, different materials, and an intermediate layer as claimed. Enclosed herewith are eight sheets of proposed amendments to the drawings designated "Third Markup Version" (marked in red) and "Third Revised Version" incorporating the proposed amendments.

The shading represents the different material types that may be used for the forefoot, midfoot, and rearfoot portions of the various embodiments of the chassis depicted in the drawings. This is described in the Specification at, for example, p. 4, ll. 15-26, where the "first portion" may be the forefoot or midfoot portion, and the "second portion" may be the forefoot or rearfoot portion. As discussed in the interview, the extent of this shading is now consistent with the forefoot, midfoot, and rearfoot portions as described in the Specification, as filed. This is illustrated by the brackets and reference designators 4, 6, 8 (in Figure 1A); 104, 106, 108 (in Figure 2A); 204, 206, 208 (in Figure 3A); and 304, 306, 308 (in Figure 4). Accordingly, as the Examiner confirmed, having the extent of this shading consistent with the described forefoot, midfoot, and rearfoot portions sufficiently depicts this claimed feature and does not represent new matter.

The shaping represents the different thicknesses as described in the Specification at, for example, p. 4, ll. 15-17. As discussed in the interview, the shaping depicted in the drawings represents various embodiments of the invention, and the location and relative magnitude (e.g.,

thickness) of the shaping are not intended to be limiting. In other words, shaping that shows, for example, a rearfoot portion that is thicker than a midfoot portion is not intended to depict a limitation that the rearfoot portion must be thicker than the midfoot portion. Rather, such shaping represents only one embodiment of the invention wherein the rearfoot and midfoot portions have different thicknesses. Another embodiment of the invention could have, for example, the rearfoot portion thinner than the midfoot portion. Accordingly, as the Examiner confirmed, this explanation of the shaping shown in the drawings sufficiently depicts the claimed features and does not represent new matter.

The layers shown represent those described in the Specification at, for example, p. 12, ll. 8-11. Applicant appreciates the Examiner's suggestion to modify the leader of reference designator 203 shown in Figures 3F and 3G such that the leader points to the locally thicker line depicted in the drawings as filed. Applicant has redrawn Figures 3F and 3G (and, for consistency, Figures 3B-3E) to show the locally thicker line and positioned the leader accordingly. The redrawn Figures are attached hereto. Accordingly, as the Examiner confirmed, this modification to the Figures sufficiently depicts the claimed features and does not represent new matter.

Applicant respectfully submits that the aforementioned changes to the drawings are sufficient to show every feature of the invention as claimed. After the Examiner's approval of these changes, Applicant will incorporate them into the final drawings. Applicant will submit final drawings no later than payment of the issue fee.

3. The Specification is objected to under 35 U.S.C. § 132. The Examiner has objected to the Specification stating that the added reference to the shading in the drawings introduces new matter.

As discussed above, the shading represents the different material types that may be used for the forefoot, midfoot, and rearfoot portions of the chassis. This is described in the Specification as filed at, for example, p. 4, ll. 15-26. The extent of the shading depicted in the Figures now conforms with the forefoot, midfoot, and rearfoot portions as described in the

Specification. As discussed in the interview, the added reference to the shading having the extent, as now depicted, does not represent new matter.

Applicant submits that the added reference to the shading satisfies the requirements of 35 U.S.C. § 132. Applicant respectfully requests reconsideration and withdrawal of the objection to the Specification under 35 U.S.C. § 132.

4. Claims 1 and 4-23 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter Applicant regards as the invention. Applicant respectfully traverses this rejection as applied to the claims as amended.

Applicant appreciates the Examiner clarifying that the instant rejection applies to claims 1 and 4-23. Applicant also appreciates the Examiner's recommendation to amend independent claims 1 and 20 to define medial and lateral sides of the chassis and reference the extent of the chassis relative thereto. Applicant has amended claims 1 and 20 accordingly. For consistency, Applicant has also amended claims 11, 26, and 39 in the same manner. No new matter has been added, because the chassis as depicted in, for example, Figures 1A, 2A, 3A, and 4, clearly has a medial side and a lateral side.

As discussed in the interview, this amendment to claims 1 and 20 is sufficient to overcome the rejection under 35 U.S.C. § 112, second paragraph. As claims 4-19 and 21-23 depend, directly or indirectly, from either claim 1 or 20, Applicant submits that these claims are definite as well.

Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1 and 4-23 under 35 U.S.C. § 112, second paragraph.

5. Claims 26, 29-31, and 35 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Hockerson (WIPO 98/20763). Applicant respectfully traverses this rejection as applied to the claims as amended.

As discussed in the interview, Hockerson discloses a cleat frame 22 with a narrowed forefoot part 64 (Hockerson Figure 6). The cleat frame 22 is used in conjunction with the sole 20 in forming the shoe 18. Examination of Hockerson Figures 2, 6, and 7 shows that, in the forefoot

part 64, the cleat frame narrows rapidly just forward of cleat supports 46, 48. Consequently, a significant portion of the forefoot region of the cleat frame 22 does not extend to the medial and lateral sides of the shoe 18.

In contrast, and as shown in Figures 1A, 2A, 3A, and 4A, the chassis of Applicant's invention does not narrow abruptly in the forefoot portion like Hockerson, but instead follows the outline of the article of footwear. In other words, the lateral and medial sides of the chassis are proximate to the lateral and medial sides, respectively, of the article of footwear. Accordingly, and as discussed in the interview, Applicant has amended independent claim 26 to reflect this characteristic. No new matter has been added thereby.

This amendment to independent claim 26 clearly and patentably distinguishes Applicant's invention over Hockerson, thereby rendering claim 26 allowable. As claims 29-31, and 35 all depend, directly or indirectly, from independent claim 26, Applicant respectfully submits that these claims are allowable as well.

Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 26, 29-31, and 35 under 35 U.S.C. § 102(b) as being anticipated by Hockerson.

6. Claims 1, 4, 6-10, 19-21, and 39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hiss (U.S. Pat. No. 1,484,785) in view of Trimpop (German 29700699). Applicant respectfully traverses this rejection as applied to the claims as amended.

Hiss discloses an arch supporting appliance 1 having a shank portion 2 that is asymmetric with respect to the sagittal axis of the arch supporting appliance 1. Hiss Figures 4 and 5. This avoids support of the inner longitudinal arc. Hiss claims 1-4.

Trimpop discloses a plate 2 that includes tongues 4 that join at the bridge 5. The bridge 5 is not asymmetric, and it is sufficiently wide to accommodate the junction of the tongues 4. The tongues 4 cover the contact surface of the sole nearly completely. Trimpop translation, p. 2, l. 20.

An invention is nonobvious over the prior art when the proposed combination results in one of the patent references being inoperable for its intended purpose. *Tec Air, Inc. v. Denso Mfg. Mich. Inc.*, 52 USPQ 2d 1294, 1298 (Fed. Cir. 1999) (quoting *In re Spinnoble*, 160 USPQ

237, 244 (C.C.P.A. 1969)). The combination of Hiss and Trimpop does not render Applicant's invention obvious because such a combination would destroy the intended functionality of the Hiss shank portion 4. The Hiss shank portion 4 requires asymmetry to avoid support of the inner longitudinal arc. The Trimpop bridge 5 requires an adequate width to provide sufficient area for all of the Trimpop tongues 4 to join. Any shank or bridge portion that was sufficiently wide to accommodate the tongues 4 from their positions across the contact surface of the sole would, as shown in Trimpop Figure 3, extend across the width of the shoe. This would support the inner longitudinal arc, a characteristic that Hiss claims 1-4 expressly reject.

In view of the discussion above, Applicant respectfully submits that independent claims 1, 20 and 39 are clearly and patentably distinguished over the cited references, either alone or in proper combination, and are therefore allowable. As claims 4, 6-10, 19, and 21 all depend, directly or indirectly, from claim 1 or 20, Applicant respectfully submits that the remaining claims are allowable as well.

Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1, 4, 6-10, 19-21, and 39 under 35 U.S.C. § 103(a) as being unpatentable over Hiss in view of Trimpop.

7. Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hiss (U.S. Pat. No. 1,484,785) in view of Trimpop (German 29700699), and further in view of Kendall (U.S. Pat. No. 5,713,143). Applicant respectfully submits that Kendall fails to cure the deficiencies of Hiss and Trimpop with respect to independent claim 1. Because claim 11 indirectly depends from claim 1, Applicant respectfully submits that claim 11 is clearly and patentably distinguished over the cited references, either alone or in combination, and is therefore allowable.

Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 11 under 35 U.S.C. § 103(a) as being unpatentable over Hiss in view of Trimpop, and further in view of Kendall.

8. Claims 1, 5, 6, 8-10, 12-23, and 39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Giese (U.S. Pat. No. 5,572,805) in view of Trimpop (German 29700699). Applicant respectfully traverses this rejection as applied to the claims as amended.

Applicant appreciates the Examiner clarifying, during the interview, that the instant rejection includes Trimpop as the secondary reference.

Giese discloses a composite shoe bottom with a lower layer 2, an upper layer 3, and stabilizer 19 molded therebetween above the lower layer 2. Col. 11, l. 67 – col. 12, l. 3; Figures 111 – 116. The stabilizer 19 includes stabilizer arms 29 that are confined to the area about the ball of the foot and that do not extend into the forefoot area. Col. 12, ll. 7-10; Figure 111.

Trimpop discloses a plate 2 that includes tongues 4 that join at the bridge 5. The plate 2 (also described as an “element;” Trimpop translation, p.1, ll. 45-46) can be shifted “more to the toe-area or to the heel-area.” Trimpop translation, p. 2, l. 2 (emphasis added).

Applicant respectfully submits that Applicant’s invention is nonobvious because there is no suggestion to combine Giese with Trimpop in the manner suggested in the Office Action to arrive at the claimed invention. A reference may be said to teach away when a person of ordinary skill, on reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path the applicant took. *In re Gurley*, 31 USPQ 2d 1130, 1131 (Fed. Cir. 1994).

As discussed above, Trimpop expressly teaches that the plate 2 is either in the toe-area or the heel-area, not both. Accordingly, Trimpop teaches away from a combination with Giese to show, as the Office Action states (Office Action, p. 5) that a chassis can extend from the heel area to the toe area. Applicant respectfully submits, therefore, that Applicant’s invention is nonobvious with respect to the combination of Trimpop and Giese.

Accordingly, Applicant respectfully submits claims 1, 5, 6, 8-10, 12-23, and 39 are clearly and patentably distinguished over the cited references, either alone or in proper combination, and are therefore allowable. Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1, 5, 6, 8-10, 12-23, and 39 under 35 U.S.C. § 103(a) as being unpatentable over Giese in view of Trimpop.

9. Claims 26-30 and 35-38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Giese (U.S. Pat. No. 5,572,805) in view of Trimpop (German 29700699), and further in view of Crowley (U.S. Pat. No. 4,393,604).

With respect to claims 26-30, the Office Action identifies the “different contours” present in Giese. Office Action, p. 6. These contours are not localized, but are uniformly distributed over the ground contacting portions of the outsole. Giese Figures 146-148. Giese does not include any reference to contours that are non-uniform, as would be the case with cleats. Even when more than one contour is used, Giese shows that the contours are uniformly distributed and not localized. Giese Figures 149-157. In contrast, the cleats Crowley discloses are localized projections. Crowley Figures 2 and 3.

Giese’s use of uniform contours distributed over the ground contacting portions of the outsole teaches away from the use of localized projections. To maximize traction (a purpose of cleats), the latter would have no uniformity across the ground contacting surface. Such an irregular surface, as exemplified by Crowley, achieves the desired traction capability. Accordingly, Applicant’s invention is nonobvious and Applicant respectfully submits that claims 26-30 are allowable.

With respect to claims 35-38, the Office Action states that Giese shows a skin layer (the unlabeled bottom layer in Giese Figures 112 – 115 corresponding to the rubber outsole (reference designator 5) in Giese Figures 11 – 15 (col. 8, ll. 48-50)) and an intermediate layer (apparently another unlabeled layer shown immediately above the bottom layer in these figures). Giese Figures 113 – 115, which are frontal cross sectional views, clearly show that the bottom layer wraps up over the medial and lateral sides of the secondary layer. Furthermore, Giese Figure 111 (a perspective view of the shoe sole) and Giese Figure 116 (a view along a sagittal axis from the heel area toward the toe) show only the bottom layer. Consequently, the Giese intermediate layer is not externally visible.

The Office Action states that (i) the use of transparent materials for outer sole elements is extremely well known, and (ii) that it would have been obvious to make the outer skin layer of Giese transparent. Nevertheless, Applicant’s claim 36 is not directed to the transparent nature of the skin layer that the Office Action suggests, but simply to a condition wherein the intermediate

layer is externally visible. Transparency of the skin layer is but one way to achieve this condition.

Applicant respectfully submits that Giese, Trimpop, and Crowley neither suggest nor disclose an externally visible intermediate layer or a transparent skin layer. The complete visual obstruction of the intermediate layer by the skin layer is clearly evident by the shading shown in Giese Figures 111 and 116. Consequently, Applicant's invention is nonobvious and Applicant respectfully submits that claims 35-38 are allowable.

Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 26-30, and 35-38 under 35 U.S.C. § 103(a) as being unpatentable over Giese in view of Trimpop, further in view of Crowley.

10. Lastly, claim 31 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Giese (U.S. Pat. No. 5,572,805) in view of Trimpop (German 29700699), further in view of Crowley (U.S. Pat. No. 4,393,604) and Cameron (U.S. Pat. No. 3,739,497) or Barre (U.S. Pat. No. 5,473,827). Applicant respectfully submits that Cameron and Barre fail to cure the deficiencies of Giese, Trimpop, and Crowley with respect to independent claim 26 as discussed above in section 9. Because claim 31 indirectly depends from claim 26, Applicant respectfully submits that claim 31 is clearly and patentably distinguished over the cited references, either alone or in proper combination, and is therefore allowable as well.

Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 31 under 35 U.S.C. § 103(a) as being unpatentable over Giese in view of Trimpop, further in view of Crowley and Cameron or Barre.

CONCLUSION

In view of the foregoing, Applicant submits that claims 1, 4-23, 26-31, and 35-39 are clearly and patentably distinguished over the cited references, either alone or in proper combination, and are therefore allowable. Applicant respectfully requests entry of this Amendment and Response, reconsideration, and early favorable action by the Examiner.

The Examiner is cordially invited to contact Applicant's undersigned representative at the number listed below to discuss any outstanding issues.

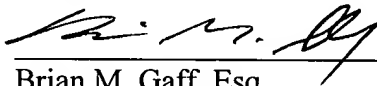
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VERSION OF AMENDED ITEMS WITH MARKINGS TO SHOW CHANGES MADE

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IN THE CLAIMS:

1. (Three Times Amended) A single piece generally planar polymeric chassis for installation in an article of footwear, the chassis comprising:

a medial side;

a lateral side;

a midfoot portion;

a forefoot portion, including a plurality of elongated elements that, ~~when the chassis is installed in the article of footwear,~~ extend from ~~a~~ the lateral side to ~~a~~ the medial side, ~~of the article of footwear and~~ from the midfoot portion into substantially an entire length of the forefoot portion ~~of the article of footwear,~~ the plurality of elongated elements defining at least one space therebetween extending from a forwardmost extent of the forefoot portion and terminating in the midfoot portion; and

a rearfoot portion, including at least one elongated element that, ~~when the chassis is installed in the article of footwear,~~ extends from the midfoot portion into substantially an entire length of a heel portion of the ~~article of footwear~~ chassis.

11. (Amended) The chassis of claim 10, wherein the chevron opens to one of ~~a~~ the medial side or ~~a~~ the lateral side of the ~~article of footwear~~ chassis.

20. (Three Times Amended) A single piece generally planar polymeric chassis for installation in an article of footwear, the chassis comprising a plurality of elongated elements that, ~~when installed in the article of footwear,~~ extend from a

lateral side to a medial side of the ~~article of footwear~~chassis and extend substantially along an entire length of the ~~article of footwear~~ from a heel portion of the ~~article of footwear~~chassis to a toe portion of the ~~article of footwear~~chassis, each elongated element comprising:

a midfoot portion;

a forefoot portion; and

a rearfoot portion;

wherein the plurality of elongated elements define at least one space therebetween extending from a forwardmost extent of the forefoot portion of the plurality of elongated elements and terminating in the midfoot portion.

26. (Three Times Amended) An article of footwear including a sole with at least one cleat, the sole comprising a polymeric chassis, wherein a forefoot portion of the chassis ~~extends from~~has a lateral side ~~to~~and a medial side, the lateral and medial sides being proximate to corresponding lateral and medial sides of the article of footwear, the chassis extending and substantially along an entire length of (i) a heel portion of the article of footwear, and (ii) a toe portion of the article of footwear.

39. (Amended) A polymeric chassis for installation in an article of footwear, the chassis comprising at least three elongated elements that, ~~when installed in the article of footwear~~, extend from a lateral side to a medial side of the ~~article of footwear~~chassis and extend substantially along an entire length of the ~~article of footwear~~chassis from a heel portion of the ~~article of footwear~~chassis to a toe portion of the ~~article of footwear~~chassis, each elongated element comprising:

a midfoot portion;

a forefoot portion; and

a rearfoot portion.